THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M.No.7917-C of 2006 &
R.S.A. No.3247 of 2006

Date of Decision: 25 -9 -2006

State of Haryana and others **.....Appellants**

v.

Sushil Kumar **.....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Ashish Kapoor, Addl. A.G., Haryana
for the appellants.

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P.S.PATWALIA, J. (Oral)

The present regular second appeal is barred by limitation by a period of 91 days. The application has been filed seeking condonation of delay.

Plaintiff filed the suit challenging memo dated 24.3.1995 issued by the Director, Sports and Youth Welfare Department, Haryana disturbing the seniority of the plaintiff and showing him junior to persons who were junior to the him in the seniority list prepared on 26.11.1992. He also challenged the order reverting him from the post of Assistant to that of Clerk on the basis of this change in his seniority. The trial Court found that in the seniority list which was circulated by the Department on 26.11.1992 the plaintiff was shown at serial No.8. In the revised seniority list which was prepared on 24.3.1995, the name of the plaintiff was relegated to serial No.41. As a result of the same the plaintiff was reverted from the post of Assistant to that of Clerk.

During the pendency of the suit the reversion of the plaintiff was

stayed. The trial Court found that the change in the seniority of the plaintiff was brought about without giving any notice to him. It was therefore found that the change in the seniority was in violation of the principles of natural justice. Liberty was, however, given to the appellant – State to prepare fresh seniority list in accordance with rules. However, the reversion of the plaintiff on the basis of the revised seniority list which was circulated in violation of the principles of natural justice was set aside. The relevant observations of the trial Court in this regard are as hereunder:-

> "From careful scrutinized the seniority list prepared in the year 1992, defendants department have shown 62 vacancies on the post of clerk and name of plaintiff Sushil Kumar stands at sr. No.8 in the said list. However, when the fresh seniority list was prepared on 24.3.1995 as Ex.P9 at that time, no notice was given to the plaintiff prior to disturbing his seniority from serial no.8 to 41. Not only this, defendants department has further passed reversion order Ex.P6 on 25.7.1995 from the post of Assistant to that post of Clerk on the basis of revised seniority list Ex.P9 on the file. Meaning thereby, defendants department have violated the principles of natural justice. While disturbing the seniority of an employee or re-fixing of seniority without giving any notice or not followed by the rules of audi alteram partem by the authority. Therefore, reversion order Ex.P6 is illegal, null & void and against principles of natural justice and not binding upon the right of plaintiff in any manner. However, it is not open to the court to issue direction to prepare fresh seniority list while ignoring the right of other employees. However, defendants department shall at liberty to prepare fresh seniority list while ignoring the right of other employees. However, defendants department shall at liberty to prepare fresh seniority list in

accordance with rules while considering the final seniority list prepared in the year 1992 as Ex.P8 on the file. The authority cited on behalf of plaintiff are identical with the facts of this case. Accordingly, this issue is decided in favour of plaintiff."

These findings have been confirmed by the lower Appellate Court.

I find no error in the view taken by the Courts below. Since the seniority of the plaintiff had been changed without complying with the principles of natural justice, the same cannot be sustained. As a consequence reversion of the plaintiff on the basis of changed seniority was rightly set aside. However, the trial Court has given liberty to the appellants to frame fresh seniority list in accordance with rules and after complying with the principles of natural justice. Therefore I find no merit in this regular second appeal. Consequently, the appeal as well as application seeking condonation of delay in filing the appeal are dismissed in limine.

(P.S.PATWALIA)
JUDGE

September 25, 2006.

RC